IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 107 OF 2004

Krishna Tukaram Shete .. Petitioner

v/s.

Special Land Acquisition Officer
No.14, Pune & ors. .. Respondents

Mr.S.G.Aney, senior counsel i/by Mr.L.M.Acharya for the petitioner.

Mr.Y.D.Mulani, Assistant Government Pleader for respondent Nos.1 to 3 and 5.

Mr.R.S.Apte i/by Mr.M.V.Limaye for respondent No.4.

**CORAM : R.M. LODHA AND**
**R.S. MOHITE, JJ.**

**DATED : 6th April, 2005**

**P.C.**

Heard Mr.S.G.Aney, the learned senior counsel for the petitioner, Mr.Y.D.Mulani, the learned AGP for respondent Nos.1 to 3 and 5 and Mr.R.S.Apte, the learned counsel for respondent No.4.

2. The subject matter of the property is CTS No.932, admeasuring 391 sq.mtrs. situated at Bhor, Taluka Bhor, District Pune. The petitioner claims to be owner of the said property. In the final development plan published in the year 1978 under the provisions of the Maharashtra Regional and Town Planning Act, 1966, ((for short, the MRTP Act, 1966), the subject property was reserved for the public purpose of shopping complex. The acquisition

of the subject property commenced under the provisions of the Maharashtra Regional and Town Planning Act, 1966. According to the petitioner, the declaration made under section 126(4) of the MRTP Act, 1966 was published in the Government gazette on 24.5.2001. The award was passed by the Land Acquisition Officer on 3rd January, 2004.

3. The contention on behalf of the petitioner is that the declaration under section 126(4) of the MRTP Act, 1966 having been published in the Government gazette on 24th May, 2001, the award made on 3rd January, 2004 is beyond two years from the date of publication of declaration and, therefore, by virtue of section 11-A of the Land Acquisition Act, the land acquisition proceedings have lapsed.

4. We may notice here that from the facts narrated in the award it appears that the declaration under section 126(4) of the MRTP Act, 1966 though was published in the Government gazette on 24.05.2001, its publication was made on site on 18.9.2001 and on the notice board of Tahsildar on 20.9.2001.

5. In the case of State of Maharashtra v. Sant Joginder Singh Kishan Singh and ors., AIR 1995 SC 2181, it has been held by the Supreme Court that section 11-A of the Land Acquisition Act is not applicable to the acquisition proceedings and the

acquisition of land for the town planning under the MRTP Act, 1966.

6. The correctness of the decision given in the case of Sant Joginder Singh Kishan Singh has been doubted in the case of Girnar Traders v. State of Maharashtra and ors., (2004)8 SCC 505 and the matter has been referred to the larger bench.

7. We have already taken the view in the case of Mohd.Ishaq Dawood Tambe and ors. v. Special Land Acquisition Officer and ors., Writ Petition No.701 of 2005 that in so far as this court is concerned, the binding nature of the decision in the case of Sant Joginder Singh Kishan Singh is not affected merely because its correctness has been referred to by the larger Bench. We considered this aspect in the case of Mohd.Ishaq Dawood Tambe thus-

> "2. The contention on behalf of the petitioners is that the publication was lastly made on 23rd April 2002 at site. It is contended that Award made on 10th January 2005 is beyond two years from the date of publication of declaration and, therefore, by virtue of Section 11-A of the Land Acquisition Act, the Land Acquisition proceedings have lapsed.
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> 3. The learned senior counsel appearing for the respondent No.2 invited our attention to the judgment of the Apex Court in the case of State of Maharashtra & anr. v. Sant Joginder Singh Kishan Singh & ors., AIR 1995 S.C.2181 and submitted that Section 11-A of the Land Acquisition Act is not applicable to the acquisition proceedings and the acquisition of land for the town planning under the Maharashtra Regional and Town

Planning Act, 1966.

4. Mr.R.S.Datar, the learned counsel for the petitioners submitted that in the case of Girnar Traders v. State of Maharashtra & ors., (2004) 8 S.C.C.505 the correctness of the decision in Sant Joginder Singh Kishan Singh has been referred to the larger Bench.

5. The Division Bench of this Court through one of us (R.M.Lodha, J.) in Yeshwant Natthuji Meshram v. State of Maharashtra & ors., 1995 (1) Mah.L.J. 48 with reference to the question about the binding nature of the decision of the Supreme Court referred to the larger Bench held that the decision of the Supreme Court referred to Larger Bench for consideration does not make the law already laid down not binding on the High Court till the authoritative pronouncement is delivered by the larger Bench of the Supreme Court. In paragraph 22 of the report it observed thus:-

> "22. True it is that the question whether a court can order the C.B.I., an establishment under DSPE Act, to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf, is referred to the larger Bench by the order of the Supreme Court dated March 10,1989 in Haryana Mahila Sanghtan's case (supra), but the law already laid down by the Apex Court in some of its judgments relating to section 6 of the DSPE Act does not cease to be binding on the High Court. We are of the view that the decision of the Supreme Court referred to larger Bench and sought to be examined does not make the law already laid down not binding on the High Court till the authoritative pronouncement is delivered by the larger Bench of Supreme Court."

6. In our considered view, the contention raised by the learned counsel for the petitioners stands concluded against the pensioners by the decision of the Apex Court in Sant Joginder Singh Kishan Singh (cited supra) wherein it has been held

> that Section 11A of the Land Acquisition Act is not applicable to the acquisition proceedings and acquisition of land for town planning under the Maharashtra Regional and Town Planning Act, 1966."

8. For what we have already said in Mohd.Ishaq Dawood Tambe, this writ petition does not deserve to be entertained.

9. Dismissed in limine.

10. For a period of four weeks, the order of status-quo passed on 14.1.2004 shall remain operative.

**(R.M. LODHA, J.)**

**(R.S. MOHITE, J.)**